



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 7, 1996

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Public Safety  
125 E. 11th Street  
Austin, Texas 78701-2483

OR96-0912

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. The request was assigned ID# 40279.

The Texas Department of Public Safety (the "department") recently received a request for "a copy of all information and the source" concerning a complaint submitted to an investigator within your Civil Rights Division. The department has released most of the information requested but contends that portions of the remainder of the requested information must be withheld from public disclosure pursuant to section 552.101 of the Government Code pursuant to the holding in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry,

stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The documents submitted to this office relate to an employee's grievance over management behavior. Portions of these documents make vague references to a complaint of sexual harassment. However, there is no adequate summary of the complaint in the documents and, therefore, the alleged victim's statement and witnesses' statements may not be withheld. However, based on *Ellen*, the department must withhold the identities of the alleged victim and the witnesses and any information which would tend to identify the witnesses or victim, in each of the submitted documents.<sup>1</sup> We have marked the information that must be withheld. The remainder of the requested information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 40279

Enclosures: Marked documents

cc: Ms. Cheryl Mazur  
Texas Department of Public Safety  
125 E. 11th Street  
Austin, Texas 78701-2483  
(w/o enclosures)

---

<sup>1</sup>We note that the common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance, *see* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978), and, therefore, the identity of the alleged offender may not be withheld from the requestor.